THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO.12259 OF 2005

DATE: 08-12-2005

Between:

Dr.D.Mahaalakshmamma,

w/o Sri C.Sai Rama Linga Reddy,

Aged 58 years, Associate Professor in the

Department of Telugu Studies,

S.V.University, presently working as Profession

in Dravidian University, Kuppam,

R/o Kuppam, Chittoor District

… Petitioner

A n d

Sri Venkateswara University,

Tirupathi, Chittoor District

Rep. by its Registrar and another

…. Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO. 12259 OF 2005

ORAL ORDER:

The petitioner claims to be an Associate Professor in the Department of Telugu Studies in the S.V. University. She assails the proceedings dated 10-05-2005 issued by the University, putting the second respondent on probation for a period of two years in a vacancy caused due to the termination of one Dr.A.Anandam, w.e.f. 30-10-1992. The petitioner also seeks a direction to the University to regularize her services in the cadre of Assistant Professor Telugu Studies w.e.f. 29-10-1992, in lieu of the regularization of the second respondent and also seeks monetary and other benefits consequent on her claim.

It appears that the first respondent – University pursues a unique and singular regime, of its own. Now to the facts and the chronology of the events leading to the impugned order: During February 1992, the first respondent advertised one post of Reader and two posts of Lecturers in the Department of Telugu Studies. A duly constituted Selection Committee recommended the names of Dr.N.Munirathnamma and Dr.P.Sreenivasulu Reddy for the lecturer vacancies. Consequent on the recommendation, Dr.Munirathnamma was appointed against the clear lecturer vacancy occasioned due to one Dr. P.Narasimha Reddy, a lecturer having been appointed as a Professor in a regular vacancy. The other selected candidate Dr. P. Srinivasulu Reddy was appointed in the other regular vacancy of lecturer occasioned by the previous incumbent Dr. J.Pratap Reddy, having been appointed a Reader under a special assistance programme.

During the course of such selection process or shortly thereafter, two Reader vacancies had fallen vacant on account of the demise of Prof.M.Subba Reddy and Prof. G.Nagaiah. These gentlemen, who were Readers, had been promoted as Professors under a U.G.C scheme. Dr.K.Munirathnam, who was working as a Lecturer, was selected as a Reader by the selection committee constituted pursuant to the notification in February 1992. This gentleman was appointed as a Reader in the Department of Telugu against the vacancy on account of demise of Prof. G.Nagaiah. Thus one vacancy of Reader and two vacancies of Lecturers, notified in February 1992, were filled up by the candidates selected as above, by a duly constituted Selection Committee.

From 20-04-1992, one Dr. A.Anandam, a Lecturer in Telugu went on deputation to the Telugu University, retaining his lien in the first respondent-University. As

a consequence, after appointments to the posts of one Reader and two Lecturers were completed, it was seen that one post of a Reader (arising on the death of Prof. M. Subba Reddy) and a casual vacancy in the post of a Lecturer (caused by the deputation of Dr.A.Anandam) were available. The first respondent-University decided to fill these vacancies with the candidates leftover in the selection list prepared by the earlier constituted Selection Committee. In such "waitlist", the petitioner figured at Sl.No.2 and the second respondent at Sl.No.3. The University proceeded to temporarily appoint the petitioner as a Lecturer in the casual vacancy caused on the deputation of Dr.Anandam. The second respondent was temporarily appointed as a Lecturer against the vacancy of a Reader's post, occasioned on account of the demise of Prof. M.Subba Reddy.

A unique reason was given for filling up the Reader's vacancy by temporarily appointing the second respondent.

In the first respondent's – University counter-affidavit it is stated that: "since the vacancy is that of a Reader Post (occasioned by the death of Prof. Subba Reddy), if it is to be filled up on a regular basis, it may not be possible to accommodate an internal candidate and if an outsider is appointed as a Reader, the incumbent in the post may be terminated". The reasons apart, the fact of the matter is that the petitioner and the second respondent reported to duty to the post of lecturer to which they were temporarily appointed, on 30-10-1992.

It would appear that Dr.Anandam, who was on deputation to the Telugu University, addressed the first respondent – University that he desired to rejoin duty as Lecturer in the first respondent- University, after completion of his lien period. Responding to the said request, the Board of Management of the first respondent, by its Resolution dated 08-04-1993, permitted Dr.Anandam to rejoin as Lecturer in the Department of Telugu. As the petitioner, who was appointed in the lien vacancy of Dr.Anandam, would face retrenchment should Dr.Anandam rejoin, despite being No.2 in the "waitlist", the first respondent – University pursued a creative exercise. By a decision dated 03-02-1993 the placements of the petitioner and the second respondent were substituted. Consequently, the petitioner was appointed temporarily as a Lecturer in a Reader's vacancy (occasioned by the death of Prof.Subba Reddy) and the second respondent was appointed temporarily in the casual vacancy

(occasioned by the deputation of Dr.Anandam), who was threatening to return to the service of the first respondent. Revised proceedings were accordingly issued on 11-02-1993. The petitioner acquiesced in her shift as above as it was conducive to her then interests, as she was saved the contingency of being reverted/retrenched on the threatened return of Dr.Anandam.

Dr.Anandam did not return to the first respondent-University service, as he had earlier threatened. Instead he represented to the Registrar of Telugu University (to which he was deputed) for transfer of his service benefits from the first respondent- University to that University. The first respondent accommodated the above request of Dr.Anandam, transferred his service benefits to the Telugu University and consequently terminated his service in the first respondent- University vide the proceedings of the Vice Chancellor dated 20-05-2000.

The post of a Lecturer earlier held by Dr. Anandam thus became a regular vacancy after 20-05-2000. However, the petitioner continued as a casual Lecturer in the regular vacancy (occasioned by the death of Prof. Subba Reddy), while the second respondent continued in the casual vacancy of Dr.Anandam, which became a regular vacancy on the termination of Dr.Anandam's service by the Vice Chancellor's proceedings dated 20-05-2000. As long as the petitioner and the second respondent continued to hold the position of casual Lecturers in Telugu Department, there was no contest between them nor were there any competing interests or claims.

By the impugned proceedings dated 10-05-2005, the first respondent – University commenced the probation of
the second respondent in the post of a Lecturer (since
re-designated as Assistant Professor) in the Department of Telugu Studies w.e.f. 30-10-1992. This was on account of the fact that the services of Dr.Anandam (in the University) were terminated w.e.f. 30-10-1992, by the proceedings of the
Vice-Chancellor dated 20-05-2000, so as to enable Dr.Anandam to pursue greener career opportunities in the Telugu University.

The first respondent- University while commencing the probation of the second respondent did not consider it appropriate or even obligated to look into the

provisions of the A.P. Universities Act 1991 (the 'Act' for short) nor the established principles of service law. No appointment could have been made by the first respondent – University, a State within the meaning of Article 12 to any post in public employment without a notification that sensitized every eligible citizen for such employment, to the availability of such opportunity. It is not the University's case that the post of a Lecturer in Telugu Studies could be filled up internally by promotion or "absorption" of temporary Lecturers. The provisions of the Act, in particular Section 43, specify the selection committee; mandate that appointments to the posts of Professors, Readers and Lecturers be in accordance with the procedures and by the Selection Committee specified in Section 41. Regularization of service of a person in casual employment or the devious devise of placing a casual employee on probation with retrospective effect, is not a legitimate method of making a regular appointment to the post of a Lecturer. It is unfortunate that the first respondent – University has callously and negligently disregarded the provisions of the plenary legislative mandate contained in Section 41 of the Act.

Probation, unless the expression, has a different connotation in the Lexicon of the first respondent, normatively connotes putting on an observation tenure, a candidate regularly appointed to a regular vacancy so as to observe his conduct, behaviour and performance during the period of such probation for eventual regular employment. The initial process of selection, the availability of a clear vacancy and the decision to appoint such selected candidate to such clear vacancy, in accordance with the applicable law are all *sine quo non* for placing a candidate on probation. On behalf of the first respondent, it is not stated that probation means anything else in the legal terminology of the first respondent. If that be so, the order dated 10-05-2005, commencing the probation of the second respondent and w.e.f.30-10-1992 is *ab initio* void and a callous, vagrant and subversive decision of the first respondent - subversive of the substantive and procedural discipline clearly mandated by the provisions of the Act.

The petitioner challenges the proceedings dated 10-05-2005, issued in favour of the second respondent, on the ground that she ought to have been treated as having been appointed in a regular vacancy (occasioned on the termination of

Dr. Anandam) and that her services should have been placed on probation in such vacancy. For reasons alike, the services of the petitioner cannot also be placed on probation, by the University, as that would equally be subversive of the provisions of the Act. The petitioner cannot claim to have worked in the vacancy of Dr. Anandam since 1993 (11-02-1993). She was working as a casual Telugu Lecturer, in the vacancy occasioned by the demise of Prof. Subba Reddy. The second respondent continued to work casually in the deputation vacancy of Dr.Anandam. From this factual position, there is no escape for the parties to this writ petition including the first respondent – University.

There is another reason why neither the petitioner nor the second respondent can be considered as having been selected by a duly constituted committee. Only three vacancies, one of a Reader and two of Lecturers, in the Department of Telugu Studies, were notified in February 1992. Admittedly, those vacancies were filled up on a regular basis and by incumbents who occupied those posts pursuant to the selections conducted then. The petitioner and the second respondent were the leftover candidates of such selection (without the notified vacancies). The waitlist formula invented by the first respondent – University is a formula which has no basis in law or in a legitimate practice. The continuation of a 1992 waitlist till the year 2005 is an aberration that would be an abomination within the text and structure of the substantive and procedural discipline mandated for selections to teaching posts in Universities, by the provisions of the 1991 Act. If the University were permitted the practice of identifying “waitlist” candidates of 1992 and continuing such waitlist for over a decade, such a practice would subvert the chances of all persons qualified since 1992 for appointment to public offices (for teaching) in the first respondent – University. Such a practice would be a blasphemy of the equality injunctions of Article 14 of the Constitution of India and it is not suggested that the first respondent is immune from adherence to such equality injunctions.

For the aforesaid reasons, the order in E.II(2)/2004-05 dated 10-05-2005 of the first respondent – University, placing the service of the second respondent on probation as a Lecturer (Assistant Professor) for a period of two years w.e.f. 30-10-1992, is set aside, but not on the grounds pleaded by the petitioner. The impugned order is void and unenforceable for violating the provisions of Section

41 of the Act and is inconsistent with the equality injunctions of Articles 14 and 16 of the Constitution of India. For reasons alike it must be observed that the petitioner would not also be entitled to commence his probation unless selected and appointed by a duly constituted Section Committee and after notification of a vacancy for the post of a Lecturer in Telugu Studies.

Writ petition is disposed of as above. There shall be no order as to costs.

_____

08-12-2005.

Lrkm.